

REMARKS

This Amendment is responsive to the Office Action mailed May 5, 2005.

Claims 1-36 are presently pending in the application.

OBJECTION TO ABSTRACT

An objection to the Abstract was made in view of the use of the word "compromise."

A minor amendment has been made to the Abstract to remove the word "comprises."

Thus, it is believed that this objection has now been rendered moot, and reconsideration is respectfully requested.

OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTION

Claims 1-4, 6, 7, 10, 11, 14-16, 18-20, and 22-26 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-5, 6, 8, and 11-13 of copending Application No. 10/675,557.

In response thereto, a Terminal Disclaimer is being submitted herewith, disclaiming the terminal portion of any patent that issues from the present application that extends beyond the expiration of any patent granted for the 10/675,557 application.

Thus, it is believed that this rejection has now been rendered moot, and reconsideration is respectfully requested.

REJECTION UNDER 35 U.S.C. § 103(a)

Claims 1-34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over

Paine et al. (U.S. Pat. No. 5,614,305) in view of Chiou et al. (U.S. Pat. No. 5,369,163).

This rejection is respectfully traversed.

Initially, the Examiner will note that Paine et al. is directed to a multi-layer stack of polymer plies that are reinforced with SMA fibers 8 (Figure 2). This reference does not appear to make any mention of using SMA “particles,” but only of using SMA “fibers” in the construction of a multi-layer polymer composite material.

Chiou et al. discloses a process for preparing large-dimension emulsion polymer particles, apparently ranging in shape from egg-like through rod-like, up to extended filaments. There is no mention in this reference that these particles are SMA particles. Similarly, there is no mention of using these particles in a protective coating comprising a base compound, such as, for example, a paint. Conversely, there is no suggestion in Paine et al. of using the SMA fibers therein in connection with a base compound such as a paint. As noted above, Paine et al. does not even appear to disclose the use of particles, but rather limits the disclosure of the SMA materials to fibers.

It is respectfully submitted that the teachings of the Paine et al. and Chiou et al. references have been combined in hindsight using the Applicant’s own disclosure as a road map. There must be some desirability or motivation in one or the other of the references to make the combination sited by the Examiner. In this instance, for example, it would appear that using SMA particles instead of elongated fibers may actually work to reduce the strength of the multi-layer polymer material. Hence, it would appear that using particles instead of elongated fibers or filaments in Paine et al. may result in an adverse performance characteristic, that being the actual weakening of the multi-layer material over what would be achieved with continuous-length, elongated fibers.

For these reasons, it is believed that the desirability and motivation to combine the Paine et al. and Chiou et al. references would only come to one skilled in the art after reviewing the present application.

In view of the foregoing, reconsideration and withdrawal of the rejections of Claims 1-36 is most respectfully requested.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: May 26, 2005

By: 
Mark D. Elchuk, Reg. No. 33,686

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600

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Attachments: Terminal Disclaimer
Statement Under 37 CFR 3.73(b)

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